

STATE OF WISCONSIN)
)
 DEPARTMENT OF AGRICULTURE,) ss.
 TRADE AND CONSUMER PROTECTION)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, John M. Alberts, Administrator, Trade and Consumer Protection Division, State of Wisconsin, Department of Agriculture, Trade and Consumer Protection, and custodian of the official records of said Division, do hereby certify that the annexed order repealing Ag 99.04 and 99.05(1)(f) and creating Ag 99(title)(Note) and Ag 101, Wisconsin Administrative Code, relating to vegetable procurement trade practices, were duly approved and adopted by the Department on November 12, 1992.

I further certify that said copy has been compared by me with the original on file in the Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the Department offices in the city of Madison, this 12th day of November, 1992.



John M. Alberts

 John M. Alberts, Administrator
 Trade & Consumer Protection Division

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Memorandum

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DATE: November 12, 1992

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TO: Gary Poulson - Revisor of Statutes Office
119 Martin Luther King, Jr. Blvd, 2nd Floor

Revisor of Statutes
Bureau

FROM: John M. Alberts, Administrator, Trade & Consumer Protection Division
Agriculture, Trade and Consumer Protection *JMA*

SUBJECT: Clearinghouse Rule No. 92-1, Chapter Ag 101, Relating to
Vegetable Procurement Trade Practices

I am submitting the following information for filing the above rule.

Final Regulatory Flexibility Analysis

This rule regulates trade practices in the procurement of processing vegetables from producers. The rule applies to contractors, including food processors and other handlers, who procure sweet corn, snap beans or peas from agricultural producers for use in food processing. The rule applies to a contractor who buys vegetables in this state from a producer, or who contracts with a producer to grow vegetables in this state, regardless of whether the contractor is located in this state.

The rule does not apply to persons who procure vegetables primarily for unprocessed fresh market use; nor does it apply to restaurants or retail food establishments that procure vegetables solely for retail sale at the restaurant or retail food establishment.

To the department's knowledge, none of the contractors regulated by the rule is a "small business" as defined under s. 227.114(1)(a), Stats. Vegetable contractors, including food processors and other handlers, are typically large business enterprises. Many processors are subsidiaries of national or international conglomerates. Because vegetable procurement is dominated by a fairly small number of large processing enterprises, these enterprises exercise significant market power in their transactions with agricultural producers. Although the rules regulate the operations of vegetable contractors, they do not regulate "small businesses" as defined in s. 227.114(1)(a), Stats.

The rules regulate vegetable procurement contracts and prohibit certain contract terms. The rules regulate "unharvested acreage" practices by contractors, as well as the use of "unharvested acreage pools." The rules also prohibit contractors from engaging in certain unfair business practices in the procurement of vegetables for processing. The rules will affect the operations of vegetable processors, and may require additional reporting and recordkeeping requirements. However, the rules will not require any additional professional skills, beyond those already possessed by contractors.

The rules are designed to protect agricultural producers in their transactions with vegetable processors and handlers. Many of these producers are "small businesses" within the definition of s. 227.114(1)(a), Stats.

In conclusion, the rules will not regulate small businesses, but may operate to protect small businesses (agricultural producers) from unfair business practices and methods of competition in the procurement of vegetable crops for processing.

Comments from Legislative Committees

The rule was referred to the Senate Committee on Agriculture, Corrections, Health and Human Services on September 16, 1992 and to the Assembly Committee on Agriculture, Aquaculture and Forestry on September 17, 1992. The department received no comments from either committee.

JA:mcm

ORDER
OF THE STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
ADOPTING RULES

The state of Wisconsin department of agriculture, trade and consumer protection adopts the following order to repeal Ag 99.04 and 99.05(1)(f) and to create chapter Ag 99(title)(Note) and chapter Ag 101, relating to vegetable procurement trade practices.

Analysis by the Department of Agriculture,
Trade and Consumer Protection

Statutory authority: ss. 93.07(1), 100.03(15) and 100.20(2),
Stats.

Statutes interpreted: ss. 100.03(13) and 100.20, Stats.

Scope and application

This rule regulates trade practices in the procurement of processing vegetables from producers. The rule applies to contractors, including food processors and other handlers, who procure sweet corn, snap beans or peas from agricultural producers for use in food processing. The rule applies to a contractor who buys vegetables in this state from a producer, or who contracts with a producer to grow vegetables in this state, regardless of whether the contractor is located in this state.

The rule does not apply to persons who procure vegetables primarily for unprocessed fresh market use; nor does it apply to restaurants or retail food establishments that procure vegetables solely for retail sale at the restaurant or retail food establishment.

Contract requirements

The rule establishes minimum requirements for vegetable procurement contracts. Under the rule, every vegetable procurement contract must be in writing, and must include the contractor's name, address and telephone number. When the contract is signed, the contractor must provide a copy of the signed contract to the producer.

Under the rule, a producer has a right to cancel a vegetable procurement contract. A producer may cancel a contract by mailing a written cancellation notice within 72 hours after the producer receives a copy of the signed contract, or before a later cancellation

deadline if a later deadline is specified in the contract. The producer's right to cancel must be disclosed in the contract.

A vegetable procurement contract must clearly disclose: (1) the amount which the contractor agrees to pay the producer for suitable acreage, including unharvested suitable acreage; and (2) the amount, if any, which the contractor agrees to pay the producer for abandoned acreage. A contractor is not required to pay a producer for abandoned acreage; but if the contractor does not offer any payment for abandoned acreage, that fact must be clearly disclosed in the contract.

If contract payment amounts are variable, depending on yield, grade or other factors, the contract must clearly disclose the formula or method by which the amounts will be determined. The contract must clearly disclose every charge or deduction which may affect the net amount paid to the producer.

A vegetable procurement contract must clearly specify whether the contractor or the producer is responsible for harvesting the vegetable crop. If the producer is responsible for harvest, the contract may not state or imply that the contractor will furnish harvest equipment or services unless the contractor is equipped to meet the reasonably foreseeable demand for harvest equipment and services on a timely basis.

Under every contract, the contractor must agree to submit contract disputes to impartial arbitration at the request of the producer.

Unharvested Suitable Acreage

Under the rule, if a contractor declines to harvest or accept delivery of a suitable vegetable crop, the contractor must pay the full contract amount for the suitable acreage, as if the contractor had harvested or accepted the crop on a timely basis. If a contractor is unable to harvest an otherwise suitable crop because of adverse field conditions at the time of harvest, the contractor must pay for the unharvested acreage as suitable acreage.

Although the contractor is required to pay the full contract amount for unharvested suitable acreage, the contractor may deduct a contribution for an unharvested acreage pool. The deduction must be clearly disclosed in the vegetable procurement contract, and may not exceed the maximum amount specified in the contract. The same percentage deduction must also apply to producers of harvested acreage.

When paying for unharvested suitable acreage, the contractor may also deduct harvesting and related service charges that would have been assessed against the producer had the producer's acreage been harvested. A contractor may not receive any pool funds for these services.

Unharvested Suitable Acreage; Estimating Yield or Grade

If payment for suitable acreage is based on yield or grade, the contractor must estimate the yield or grade of unharvested suitable acreage for payment purposes. Currently, under s. Ag 99.04, yield and grade must be estimated by means of field sampling. (Under the rule, the field sampling procedures are moved from s. Ag 99.04 and incorporated into ch. Ag 101.) Under the rule, if suitable acreage is left unharvested because of adverse field conditions or because field harvest is impractical, the contractor and the producer may agree on the yield and grade of the unharvested acreage without field sampling, provided that all of the following conditions are met:

- (a) The agreement is made in writing and signed by both parties during the scheduled harvest period, and a copy is provided to the producer.
- (b) The agreement clearly describes the adverse field conditions or circumstances which made harvest impractical.
- (c) Before the agreement is made, the contractor discloses to the producer in writing that the producer has a right to have the field sampled for yield and grade.

Abandoned Acreage

For payment purposes, all contracted vegetable acreage is considered suitable unless the contractor declares to the producer, in writing, that the acreage is abandoned. The declaration must state why the acreage is abandoned. The contractor may declare acreage to be abandoned if any of the following apply:

- (a) The vegetable crop is destroyed, or rendered clearly unsuitable for processing, by drought, flood, wind, hail, frost or other natural peril.
- (b) The crop yield or grade, determined in compliance with specified procedures, fails to meet the contractor's minimum standard for harvest as specified in the vegetable procurement contract.
- (c) The crop is not suitable for processing because it contains illegal pesticide residues, or pesticide residues that exceed limits specified in the vegetable procurement contract.

A contractor may require a producer of abandoned acreage to contribute to an unharvested acreage pool, and may deduct the producer's pool contribution from the amount paid to the producer for the abandoned acreage. The deduction must be clearly disclosed in the vegetable procurement contract, and may not exceed the maximum amount specified in the contract. The same percentage deduction must apply to every producer of abandoned acreage.

If a contractor declares that acreage is abandoned, the contractor may not require the producer to pay any supply or service charges, or any pool contribution, which would result in a net payment from the producer to the contractor. This does not limit charges

for supplies and services which the producer was free to obtain from sources other than the contractor.

An abandonment declaration does not relieve a contractor from any contract claim which a producer has against the contractor because of the contractor's failure to perform the contractor's obligations under the contract.

Unharvested Acreage Pool; General

Under the rule, an "unharvested acreage pool" is defined as a contractual arrangement between a contractor and producers, under which producers make contributions or authorize pay deductions in order to help finance a contractor's payments to producers of unharvested vegetable acreage.

The rule permits a contractor to establish an unharvested acreage pool, but imposes limits on the operation of a pool. A contractor may not reduce a producer's pay because of the contractor's obligations to other producers, except as part of an unharvested acreage pool that complies with the rule.

In each vegetable procurement contract with a pool participant, the contractor must clearly specify the terms and conditions of the pool, including terms related to producer contributions, contractor contributions, and the use of pool funds. The same terms and conditions must apply to every producer who participates in the pool.

Pool participants and pool acreage must be assigned to a specific pool when those participants sign vegetable procurement contracts for that acreage. Pool participants and pool acreage, once assigned to a pool, may not be reassigned to a different pool. If a pool includes participants from another state, the contract must identify all of the states in which pool participants are located.

Use of Pool Funds

Under the rule, pool funds may be used only to pay for vegetable acreage contracted with pool participants. No pool may apply to more than one contract year. A contractor may use pool funds only for the specific purposes permitted in the rule.

Under the rule, a contractor may use pool funds to pay for unharvested suitable acreage or abandoned acreage. If, because of low crop yield or grade, a producer's contract payment for harvested acreage is smaller than if that harvested acreage had been abandoned, a contractor may also use pool funds to pay the producer the difference between the harvested acreage payment and the higher minimum guarantee for abandoned acreage.

Pool Contributions

In every vegetable procurement contract with a pool participant, the contractor must clearly specify the circumstances under which the participant will be required to contribute to the pool, the method by which contributions will be assessed, and the amount of the required contribution to the pool. (Contributions include contributions in the form of pay deductions or reduced compensation under the contract.)

The contract must specify the participant's maximum potential contribution to the pool, stated as a maximum percentage deduction from the gross amount due the producer under the vegetable procurement contract. (Producers of abandoned acreage may be subject to a different maximum contribution than producers of suitable acreage.) No contractor may require a producer to contribute more than this maximum amount.

Under every unharvested acreage pool, the contractor must "match" producer contributions dollar for dollar. The contractor must also contribute to the pool as a producer if the contractor grows the same vegetable crop on acreage owned or leased by the contractor. This contribution by the contractor is treated as a producer contribution which the contractor must also "match" with a separate contractor contribution. When the contractor participates in a pool as a producer, the contractor is eligible for payments from the pool on the same basis as other participating producers.

Refunds to Pool Contributors

If the contractor collects more funds from pool contributors than the contractor distributes to producers, the contractor must refund all unused pool funds to pool contributors on a pro rata basis, based on the amount of the contributor's contribution to the pool. (Contributions include contributions in the form of pay deductions or reduced compensation under the contract.) The contractor must include each producer's pro rata refund with the contractor's final payment to the producer under the vegetable procurement contract.

Final Accounting to Pool Participants

When a contractor makes final payment to a pool participant under a vegetable procurement contract, the contractor must provide all of the following information to the pool participant:

1. The total amount that pool participants contributed to the pool.
(Contributions include pay deductions.)
2. The contractor's total contribution to the pool.
3. The total amount of pool funds paid to pool participants.

4. The total number of suitable pool acres left unharvested (this can be reported as a percentage of total pool acreage), the number of pool participants who produced that unharvested suitable acreage, and the total amount of pool funds paid for unharvested suitable acreage.

5. The total number of pool acres that were abandoned (this can be reported as a percentage of total pool acreage), the number of pool participants who produced that abandoned acreage, and the total amount of pool funds paid for abandoned acreage.

6. The total number of harvested pool acres that were eligible for pool payments because the harvest value of the acreage was less than the abandonment value, as a result of low yield or grade (this can be expressed as a percentage of total pool acreage); the number of pool participants who produced that eligible harvested acreage; and the total amount of pool funds paid for that eligible harvested acreage.

7. The total amount of pool funds refunded to pool contributors.

Pool Records

The contractor must keep specified records related to the pool. The contractor must retain the records for at least 3 years, and must make them available for inspection and copying by the department upon request. Records include the name and address of each pool participant, the amount of each participant's pool acreage, the amount which the participant contributed to the pool, and the amount of pool funds paid to that participant in each acreage category.

Prohibited Contract Provisions

Under the rule, no vegetable procurement contract may do any of the following:

(a) Require a producer to purchase seed, pesticide applications, harvest services, hauling services, or similar supplies and services from the contractor if the charges for the supplies or services exceed the reasonable market value of the supplies or services.

(b) Relieve, or purport to relieve a contractor from liability for property damage or personal injury caused by the negligent acts or omissions of the contractor.

(c) Impose, or purport to impose liability on a producer for personal injury or property damage caused by a contractor.

Prohibited Practices

Under the rule, no contractor may do any of the following:

(a) Fail to pay a producer according to the terms of a vegetable procurement contract.

(b) Knowingly misrepresent the terms of a vegetable procurement contract.

(c) Conspire with other contractors to fix prices or restrain trade in the procurement of vegetables from producers.

(d) Refuse to contract with a producer because the producer filed a complaint, asserted the producer's legal rights, joined or attempted to organize a producer organization, advocated or participated in any government action or proceeding, or discussed or advocated producer interests related to vegetable procurement or vegetable industry issues.

(e) Charge a producer for defective seed planted under a vegetable procurement contract if the seed supplier reimburses the contractor for the cost of that seed.

Rule Review

Under the rule, the department is required to review the rule provisions in 3 years and recommend changes as necessary.

SECTION 1. Ag 99(title)(note) is created to read:

NOTE: This chapter is adopted under authority of ss. 93.07(1) and 100.03(13), Stats.

SECTION 2. Ag 99.04 is repealed.

SECTION 3. Ag 99.05(1)(f) is repealed.

SECTION 4. Chapter Ag 101 is created to read:

Chapter Ag 101

VEGETABLE PROCUREMENT TRADE PRACTICES

NOTE: This chapter is adopted under authority of s. 100.20(2), Stats.

Ag 101.01 DEFINITIONS. In this chapter: (1) "Abandoned acreage" means vegetable acreage, grown under a vegetable procurement contract, which the contractor declares to be abandoned under s. Ag 101.04.

(2) "Contractor" means a person who buys or offers to buy vegetables in this state from a producer, or who contracts or offers to contract with a producer to grow

vegetables in this state, regardless of whether the contractor is located in this state or is engaged in food processing. "Contractor" does not include any of the following:

(a) A person who procures vegetables primarily for unprocessed fresh market use and is licensed under the federal perishable agricultural commodities act, 7 USC 499.

(b) A restaurant or retail food establishment that procures vegetables solely for retail sale at the restaurant or retail food establishment.

(3) "Pool acreage" means vegetable acreage assigned to an unharvested acreage pool under s. Ag 101.05.

(4) "Pool contributor" means any of the following:

(a) A producer who contributes, either directly or by means of a deduction or reduced compensation under a vegetable procurement contract, to an unharvested acreage pool.

(b) A contractor who contributes to an unharvested acreage pool as a producer under s. Ag 101.05(8).

(c) A contractor who makes a matching contribution to an unharvested acreage pool under s. Ag 101.05(7).

(5) "Pool contribution" or "contribution" means an amount of money contributed to an unharvested acreage pool by a pool contributor. A producer's "contribution" to an unharvested acreage pool includes any contribution in the form of a deduction or reduced compensation under a vegetable procurement contract.

(6) "Pool funds" means all contributions made by pool contributors as part of an unharvested acreage pool.

(7) "Pool participant" means a producer assigned to an unharvested acreage pool under s. Ag 101.05. "Pool participant" includes a contractor who participates in an unharvested acreage pool as a producer under s. Ag 101.05(8).

(8) "Producer" means a person who produces and sells vegetables, or who grows vegetables under contract.

(9) "Suitable acreage" means all vegetable acreage grown under a vegetable procurement contract, other than acreage which the contractor declares to be abandoned under s. Ag 101.04.

(10) "Unharvested acreage" means both of the following:

(a) Vegetable acreage which a contractor leaves unharvested for any reason, regardless of whether the vegetable crop is suitable or abandoned.

(b) Acreage used to produce a vegetable crop which is rejected by the contractor for any reason, regardless of whether the crop is suitable or abandoned.

(11) "Unharvested acreage pool" or "pool" means a contractual arrangement under s. Ag 101.05 between a contractor and producers, under which producers make contributions in order to help finance a contractor's payments to other producers under s. Ag 101.05(4)(a) or (b).

(12) "Vegetable" means sweet corn, snap beans or peas that are grown or sold for use in food processing, whether or not they are actually processed as food.

(13) "Vegetable procurement contract" means an agreement between a contractor and a producer, under which the contractor buys vegetables from the producer or contracts with the producer to grow vegetables in this state.

Ag 101.02 VEGETABLE PROCUREMENT CONTRACTS. (1) **CONTRACT IN WRITING; COPY TO PRODUCER.** Every vegetable procurement contract shall be in writing, and shall include the name, address and telephone number of the contractor. The contractor shall provide a copy of the signed contract to the producer after the producer signs the contract.

(2) **PRODUCER'S RIGHT TO CANCEL.** A producer may cancel a vegetable procurement contract by mailing a written cancellation notice to the contractor within 72 hours after the producer receives a copy of the signed contract, or before a later cancellation deadline if a later deadline is specified in the contract. The producer's right to cancel, the method by which the producer may cancel, and the deadline for canceling the contract shall be clearly disclosed in every vegetable procurement contract.

(3) **CLEAR DISCLOSURE OF TERMS.** (a) Every vegetable procurement contract shall clearly and conspicuously disclose both of the following:

1. The amount which the contractor agrees to pay the producer for suitable acreage, including unharvested suitable acreage under s. Ag 101.03.

2. The amount, if any, which the contractor agrees to pay the producer for abandoned acreage under s. Ag 101.04. If the contractor offers no payment for abandoned acreage, that fact shall be clearly disclosed in the contract.

(b) If the amounts under par. (a) are variable, depending on crop yield, grade or other factors to be determined at the time of harvest, the contract shall clearly disclose the formula or method by which the amounts will be determined.

(c) The contract shall clearly disclose every charge or deduction which may affect the net amount paid to the producer under the contract.

NOTE: Sections Ag 101.03(2)(b), 101.04(1)(b) and (c), 101.04(3)(b)2, and 101.05(1)(5) and (6) also include contract disclosure requirements.

(4) **UNHARVESTED ACREAGE POOL.** (a) If a vegetable procurement contract requires a producer to participate in an unharvested acreage pool, the contract shall clearly specify the terms and conditions of the pool, pursuant to s. Ag 101.05.

(b) Except for pool contributions under ss. Ag 101.03(2), Ag 101.04(3) and Ag 101.05, no vegetable procurement contract may provide for any deduction or reduced payment to a producer because of a contractor's obligations to other producers.

(5) **HARVEST RESPONSIBILITIES.** Every vegetable procurement contract shall clearly specify whether the contractor or the producer is responsible for harvesting the vegetable crop. If the producer is responsible for harvest, the contract shall not state or imply that the contractor will provide harvest equipment or services unless the contractor is equipped to meet the reasonably foreseeable demand for harvest equipment and services on a timely basis.

(6) **ARBITRATION OF DISPUTES.** Under every vegetable procurement contract, the contractor shall agree to submit contract disputes to impartial arbitration at the request of the producer.

Ag 101.03 UNHARVESTED SUITABLE ACREAGE. (1) FULL PAYMENT REQUIRED. (a) General. If a contractor declines to harvest or accept delivery of suitable acreage grown under a vegetable procurement contract, the contractor shall pay the producer the full contract amount for the suitable acreage, as if the acreage had

been harvested or accepted on a timely basis.

(b) Suitable acreage left unharvested because of adverse field conditions. If, because of adverse field conditions during the scheduled harvest period, a contractor is not able to harvest acreage which is otherwise suitable, the contractor shall pay for the unharvested acreage as suitable acreage under this section.

(2) CONTRIBUTION TO UNHARVESTED ACREAGE POOL. Subsection (1) does not prohibit the contractor from deducting the producer's contribution to an unharvested acreage pool under s. Ag 101.05, provided that all of the following apply:

(a) Equivalent contributions from all producers. The producer's pool contribution, expressed as a percentage deduction from the gross amount due the producer for the unharvested suitable acreage, equals the percentage contribution on harvested acreage made by every producer of harvested acreage.

(b) Contribution clearly disclosed. The pool contribution requirement is clearly disclosed in the vegetable procurement contract, pursuant to s. Ag 101.05.

(c) Maximum contribution. The pool contribution does not exceed the maximum contribution specified in the vegetable procurement contract under s. Ag 101.05(6).

(3) SERVICE CHARGES. When paying for unharvested suitable acreage under sub. (1), the contractor may deduct charges for seed, harvest, hauling, grading or similar supplies or services that would have been assessed against the producer had the producer's acreage been harvested. A contractor may not receive any pool funds for these services.

(4) ESTIMATING YIELD AND GRADE OF UNHARVESTED SUITABLE ACREAGE. (a) General. Except as provided under par. (b) or (c), if payment for suitable acreage is based on yield or grade, the contractor shall estimate the yield and grade of unharvested suitable acreage by means of field sampling under sub. (5).

(b) Equivalent field sampling procedures. Rather than estimating yield or grade according to the field sampling procedures under sub. (5), a contractor may estimate yield or grade according to equivalent field sampling procedures which are clearly specified in writing in the procurement contract.

(c) Agreement on yield and grade. If, because of adverse field conditions or because field harvest is impractical during the scheduled harvest period, a contractor is not able to harvest acreage which is otherwise suitable, the contractor and the producer may agree on the yield and grade of the unharvested acreage without field sampling under sub. (5), provided that all of the following apply:

1. The agreement is made in writing and signed by the parties during the scheduled harvest period, and a copy is provided to the producer.
2. The agreement clearly describes the field conditions deemed adverse or the reason why field harvest was deemed impractical.
3. Before the agreement is made, the contractor discloses to the producer in writing that the producer has a right to have the field sampled for yield and grade in compliance with this subsection. If a producer requests field sampling, the contractor shall sample the field in compliance with par. (a) or (b).

(5) FIELD SAMPLING PROCEDURE. (a) General. If a contractor is required to estimate the yield or grade of unharvested acreage under sub. (4)(a), the contractor shall estimate the yield or grade using the field sampling procedure under this subsection. Field samples used to estimate yield or grade shall be collected when the unharvested vegetables are at maturity, and shall be collected from areas which are reasonably representative of the field.

(b) Number of samples. Except as provided under par. (c), the number of samples collected under par. (a) shall be based on the size of the field as follows:

1. At least 3 samples from different areas shall be taken from a field which is less than 40 acres.

2. At least 5 samples from different areas shall be taken from a field which is 40 to 100 acres.

3. At least 7 samples from different areas shall be taken from a field which is larger than 100 acres.

(c) Different crop or soil conditions within field; subdivision of field. If significant differences of crop or soil conditions exist within a field, the field shall be divided so that crop and soil conditions are reasonably uniform within each subdivision. Each subdivision shall be treated as a separate field under par. (b).

(d) Selecting sampling areas. The samples collected under par. (b) or (c) shall be collected from sampling areas alternately selected by the contractor and the producer. After the contractor and the producer have each selected an equal number of sample areas, the contractor and the producer shall jointly select the last sample area.

(e) Sample areas defined. Each area sample under par. (d) shall consist of one of the following:

1. If the vegetable is a row crop such as sweet corn or snap beans, each sample area shall be not less than 15 linear feet of a row.

2. If vegetables, such as peas, are planted by either the drill or broadcast method, each sample area shall be a plot of not less than 25 square feet having dimensions of not less than 5 feet in length and width.

(f) Sample weights. Each sample collected under this subsection shall be individually weighed. The weights of the individual samples shall be added together to obtain a combined sample weight for the field, which shall be divided by the number of samples to determine an average sample weight. Vegetable samples shall be weighed according to the following procedures for the respective commodity:

1. Sweet corn shall be weighed after the ears are completely husked, and the stem and any excess tip are removed.

2. Snap beans shall be weighed after all beans in the sample are removed from the vines.

3. Sweet peas shall be weighed after all peas in the sample are removed from the pods.

(g) Calculating yield per acre. The yield per acre of unharvested vegetables shall be calculated by performing the following sequential operations:

1. Calculate the square footage of each sample area. For row crops, multiply the length of the row by the space between rows, measured in feet to 2 decimal places.

2. Determine the average square footage of all the sample areas.
3. Divide the square footage of one acre (43,560 sq. ft.) by the average square footage of the sample areas to determine the number of sampling units per acre.
4. Multiply the number of sampling units per acre by the average sample weight under par. (f) to determine the yield in pounds per acre.
5. Calculate the estimated yield for the unharvested field by multiplying the yield per acre by the number of acres in the field.

(h) Documenting the yield estimate. Every yield estimate under this section shall be documented in writing, and a copy shall be provided to the producer. The documentation shall include:

1. The name and address of the contractor.
2. The identity of the producer and the location of the field.
3. The date and time when the field was sampled and the yield estimate was made.
4. The size of the field, the number of samples collected, and the calculations used to estimate the yield. If sampling methods or yield estimation methods differ from those prescribed under this section, the documentation shall specify the methods used.
5. The signatures of the contractor and the producer, or their agents.

(i) Grading samples. If payment for unharvested vegetables is based on the quality or condition of the vegetables, the samples collected under this subsection shall be graded in compliance with ch. Ag 99.

Ag 101.04 ABANDONED ACREAGE. (1) DECLARATION THAT ACREAGE IS ABANDONED. For payment purposes under s. Ag 101.03, contracted vegetable acreage is considered suitable unless the contractor declares that the acreage is abandoned under this section. A contractor may declare that acreage is abandoned if any of the following apply:

(a) The vegetable crop is destroyed, or rendered clearly unsuitable for processing, by drought, flood, wind, hail, frost or other natural peril.

(b) The crop yield or grade, determined according to the procedure specified for unharvested suitable acreage under s. Ag 101.03(4), fails to meet the contractor's reasonable minimum standard for harvest as specified in the vegetable procurement contract.

(c) The crop is not suitable for processing because it contains illegal pesticide residues, or pesticide residues which exceed limits specified in the vegetable procurement contract.

NOTE: Pesticide residues are illegal if, for example, they exceed legal tolerances on the vegetable crop, or if they resulted from the use of a pesticide which is not registered or labeled for use on that vegetable crop.

(2) **FORM OF DECLARATION.** If a contractor declares that acreage is abandoned under sub. (1), the contractor shall make that declaration in writing to the producer. The contractor shall specify the basis for the declaration under sub. (1).

(3) **CONTRIBUTION TO UNHARVESTED ACREAGE POOL.** (a) Subject to par. (b), a contractor may require a producer of abandoned acreage to contribute to an unharvested acreage pool under s. Ag 101.05, and may deduct the producer's

contribution from the amount paid to the producer for the abandoned acreage.

(b) A contractor may not require a producer of abandoned acreage to contribute to an unharvested acreage pool unless all of the following apply:

1. The producer's pool contribution, expressed as a percentage deduction from the gross amount due the producer for the abandoned acreage, equals the percentage contribution made by every other producer of abandoned acreage.

2. The pool contribution requirement is clearly disclosed in the vegetable procurement contract, pursuant to s. Ag 101.05.

3. The pool contribution does not exceed the maximum contribution specified in the vegetable procurement contract under s. Ag 101.05(6).

4. The pool contribution does not result in any net payment from the producer to the contractor.

(4) **NO NET CHARGE TO PRODUCER.** (a) If a contractor declares that acreage is abandoned under this section, the contractor may not require the producer to pay any supply or service charges, or make any pool contribution, which would result in a net payment from the producer to the contractor.

(b) Paragraph (a) does not limit charges for supplies and services which the producer was free to obtain from sources other than the contractor.

(5) **CONTRACTOR FAULT.** This section does not relieve a contractor from any contract claim which a producer may have against a contractor because of the contractor's failure to perform the contractor's obligations under the contract.

Ag 101.05 UNHARVESTED ACREAGE POOL. A contractor may establish an unharvested acreage pool under this section. The unharvested acreage pool shall comply with all of the following requirements:

(1) **TERMS SPECIFIED IN CONTRACT.** In each vegetable procurement contract with a pool participant, the contractor shall clearly specify the terms and conditions of the pool, including terms related to producer contributions, contractor contributions, and the use of pool funds. The same terms and conditions shall apply to every producer who participates in the pool.

(2) **POOL COVERAGE.** Pool funds may be used only to pay for vegetable acreage contracted with pool participants. No pool may apply to more than one contract year. If a pool applies to more than one vegetable crop, the vegetable procurement contract shall clearly identify the crops included in the pool.

(3) **PRODUCERS AND ACREAGE ASSIGNED TO POOL.** (a) Pool participants and pool acreage shall be assigned to a specific pool when those participants sign vegetable procurement contracts for that acreage. Pool participants and pool acreage, once assigned to a pool, may not be reassigned to a different pool.

(b) If any pool participants are located outside this state, the vegetable procurement contract shall identify all of the states in which pool participants are located.

(4) **USE OF POOL FUNDS; GENERAL.** (a) A contractor may use pool funds to pay for unharvested suitable acreage or abandoned acreage.

(b) If, because of low crop yield or grade, a producer is entitled to a smaller contract payment for harvested acreage than if that harvested acreage had been abandoned, a contractor may use pool funds to pay the producer the difference between the harvested acreage payment and the higher contract guarantee for abandoned acreage.

(c) A contractor may not use pool funds for any purpose other than those specified under par. (a) or (b). Payments under par. (a) and (b) are subject to the terms of the vegetable procurement contract.

(5) **PRODUCER CONTRIBUTIONS.** In every vegetable procurement contract with a pool participant, the contractor shall clearly specify both of the following:

(a) The circumstances under which the participant will be required to contribute to the pool, and the method by which contributions will be assessed.

(b) The amount of the participant's contribution to the pool, or the formula by which that contribution will be determined, subject to the maximum specified under sub. (6).

(6) **MAXIMUM PRODUCER CONTRIBUTION.** (a) In every vegetable procurement contract with a pool participant, the contractor shall specify the participant's maximum potential contribution to the pool.

(b) The maximum contribution under par. (a) shall be stated as a maximum percentage deduction from the gross amount due the producer under the vegetable procurement contract. Producers of abandoned acreage may be subject to a different maximum contribution than producers of suitable acreage, provided that the different

maximum contribution is clearly specified in the contract.

(c) No contractor may require a pool participant to contribute more than the applicable maximum amount specified under this subsection.

(7) CONTRACTOR TO MATCH PRODUCER CONTRIBUTIONS. The contractor shall contribute to the pool an amount which is not less than the total of all producer contributions to the pool. (8) CONTRACTOR ACREAGE INCLUDED.

(a) If, in any geographic area covered by a pool, a contractor grows the same vegetable crop on acreage owned or leased by the contractor, the contractor shall participate in the pool on the same basis as every other participating producer.

(b) If the contractor participates as a producer under par. (a), the contractor's pool contribution shall be treated as a producer contribution which the contractor shall also match with a separate contribution under sub. (7).

(c) If a contractor participates as a producer under par. (a), the contractor is eligible for payments from the pool on the same basis as every other participating producer.

(9) REFUNDS TO POOL CONTRIBUTORS. If the contractor collects more pool contributions than the contractor distributes to pool participants under sub. (4), the contractor shall refund all unused pool funds to pool contributors on a pro rata basis, based on the amount of each contributor's pool contribution. If the contractor refunds pool funds to producers under this subsection, the contractor shall include each producer's pro rata refund with the contractor's final payment to the producer under the vegetable procurement contract.

(10) INFORMATION TO PRODUCERS. When the contractor makes final payment to a pool participant under a vegetable procurement contract, the contractor shall provide all of the following information to the pool participant:

(a) The total amount that pool participants contributed to the pool. If the contractor participates as a producer under sub. (8), the contractor's total contribution as a producer shall be stated separately.

(b) The contractor's total contribution to the pool as a contractor under sub. (7).

(c) The total amount of pool funds paid to pool participants under sub. (4). If the contractor received pool funds as a producer under sub. (8)(c), the amount paid to the contractor shall be stated separately.

(d) The total number of suitable pool acres left unharvested, the number of pool participants who produced that unharvested suitable acreage, and the total amount of pool funds paid for unharvested suitable acreage. Instead of reporting the number of suitable pool acres left unharvested, the contractor may report that number as a percentage of total pool acres.

(e) The total number of pool acres that were abandoned, the number of pool participants who produced that abandoned acreage, and the total amount of pool funds paid for abandoned acreage. If some of the abandoned acres were not eligible for pool payments, the contractor shall also report the total number of eligible acres and producers. Instead of reporting the number of pool acres that were abandoned, or the number of abandoned acres that were eligible for pool payments, the contractor may report those numbers as percentages of total pool acres.

(f) The total number of harvested pool acres that were eligible for pool payments under sub. (4)(b), the number of pool participants who produced that eligible harvested acreage, and the total amount of pool funds paid under sub. (4)(b) for that eligible harvested acreage. Instead of reporting the number of pool acres that were eligible for pool payments under sub. (4)(b), the contractor may report that number as a percentage of total pool acres.

(g) The total amount of pool funds, if any, that the contractor refunded to pool contributors under sub. (9). If the contractor contributed as a producer under sub. (8), the amount refunded to the contractor shall be stated separately.

(11) RECORDS. (a) For each unharvested acreage pool, the contractor shall keep complete and accurate records related to each of the items under sub. (10).

(b) For each pool participant, the contractor shall keep accurate records of all of the following:

1. The participant's name and address.
2. The amount of each participant's pool acreage.
3. The participant's pool contribution, if any.
4. The amount of unharvested suitable acreage for which the participant received pool payments, and the amount of those payments.
5. The amount of abandoned acreage for which the participant received pool payments, and the amount of those payments.
6. The amount of acreage for which the participant received pool payments under sub. (4)(b), and the amount of those payments.

(c) If a contractor estimates the yield or grade of unharvested suitable acreage under s. Ag 101.03(4), the contractor shall keep complete and accurate records showing how the yield or grade was estimated in compliance with that subsection.

(12) **RECORDS RETAINED; INSPECTION AND COPYING.** A contractor shall retain the records under sub. (11) for at least 3 years, and shall make those records available to the department for inspection and copying upon request.

Ag 101.06 PROHIBITED CONTRACT PROVISIONS. No vegetable procurement contract may do any of the following:

(1) Require any producer to purchase seed, pesticide applications, harvest services, hauling services, or other supplies or services from the contractor if the charges for the supplies or services exceed the reasonable market value of those supplies or services.

(2) Relieve, or purport to relieve a contractor from liability for property damage or personal injury caused by the negligent acts or omissions of the contractor.

(3) Impose, or purport to impose liability on a producer for personal injury or property damage caused by the contractor.

Ag 101.07 PROHIBITED PRACTICES. No contractor may do any of the following:

(1) Fail to pay a producer according to the terms of a vegetable procurement contract.

(2) Knowingly misrepresent the terms of a vegetable procurement contract, the procedures used under the contract, or the services provided by the contractor under the

contract, in order to induce a producer to sign a vegetable procurement contract.

(3) Conspire with other contractors to fix prices or restrain trade in the procurement of vegetables from producers.

(4) Fail or refuse to offer a vegetable procurement contract to a producer because the producer has done any of the following:

(a) Filed a complaint with the contractor or a government agency.

(b) Requested arbitration of a contract dispute.

(c) Filed suit alleging a violation of this chapter or ch. Ag 99.

(d) Joined an association of producers, advised or attempted to organize producers, or participated in any discussion, meeting or action related to vegetable procurement or vegetable industry issues.

(e) Negotiated or attempted to enforce the terms of any vegetable procurement contract, or represented producer interests in any matter related to vegetable procurement or vegetable industry issues.

(f) Sought government action related to vegetable procurement, or testified or participated in any way in the development or implementation of laws related to vegetable procurement or vegetable industry issues.

(5) Charge a producer for defective seed planted under a vegetable procurement contract if the seed supplier reimburses the contractor for the cost of that seed.

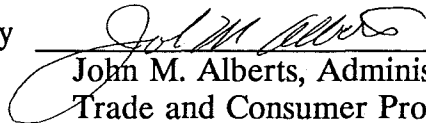
Ag 101.08 RULE REVIEW. Three years after the effective date of this chapter, the department shall submit a report to the board of agriculture, trade and consumer

protection evaluating the rules under this chapter and the need for changes to those rules.

SECTION 5. EFFECTIVE DATE. The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22(2)(intro.), Stats.

Dated this 12 day of November, 1992.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By 
John M. Alberts, Administrator
Trade and Consumer Protection
Division

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